

This opinion is not intended for publication

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:) Case No. 02-15236
)
ANDRE P. FARRIER,) Chapter 7
)
Debtor.) Judge Arthur I. Harris

ORDER DENYING TRUSTEE'S MOTION FOR TURNOVER WITHOUT
PREJUDICE TO FILING AN ADVERSARY PROCEEDING

Before the Court is the Trustee's motion for an order on AIG SunAmerica Life Assurance (AIG) to turn over the cash surrender value of a life insurance policy (Docket #45). Although the Court initially indicated it would grant the unopposed motion, upon further review, the Court believes that Bankruptcy Rule 7001 requires that a party seeking turnover from someone other than the debtor do so by commencing an adversary proceeding. This Court agrees with the reasoning of Judge Batchelder in the unpublished Sixth Circuit decision, *In re Camall Co.*:

The Bankruptcy Rules require that a party seeking a turnover file that request as an adversary proceeding rather than as a motion in another bankruptcy proceeding. Bankruptcy Rule 7001. Courts have given effect to Bankruptcy R. 7001 by holding that a turnover proceeding commenced by motion . . . will be dismissed.

16 Fed. Appx. 403, 407-08 (6th Cir. July 31, 2001) (internal quotations omitted), citing *In the Matter of Thomas J. Perkins*, 902 F.2d 1254, 1258 (7th Cir. 1990).

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Accord In re Ace Industries, Inc., 65 B.R. 199, 200 (Bankr. W.D. Mich. 1986).

Accordingly, the Court will deny, without prejudice, the Trustee's motion for an order directing AIG to turn over cash value of debtor's insurance policy. As alternatives to filing an adversary proceeding, the Trustee is free to present a consent order signed by AIG, file a motion for an order that the debtor turn over the cash value of the insurance policy, or simply ask AIG to voluntarily turn over the insurance proceeds without a court order.

IT IS SO ORDERED.

/s/ Arthur I. Harris 10/21/2003
Arthur I. Harris
United States Bankruptcy Judge